

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENESSA WESTBROOK, APRIL
WESTBROOK, and MARTIN WESTBROOK,

Plaintiffs,

v.

CASE NO: 2:09-cv-11457
HON: NANCY G. EDMUNDS
MAG. STEVEN WHALEN

JASON BRASGALLA, KEVIN SHEPARD,
G. CHESTER #3569, FOSTER #4667,
C. ANDERSON #3819, LARRY DAVIS,
JOSEPH WEEKLEY, T. DOLLINGER #s1028,
S. HOWITT #S176, E. HAYES #4993,
in their individual and official capacities,

Defendants.

CHRISTOPHER TRAINOR & ASSOCIATES
CHRISTOPHER J. TRAINOR (P42449)
SHAWN C. CABOT (P64021)
Attorney for Plaintiff
9750 Highland Road
White Lake, MI 48386
(248) 886-8650

CITY OF DETROIT LAW DEPT.
JERRY L. ASHFORD (P47402)
Attorney for Defendants
1650 First National Building
660 Woodward Ave.
Detroit, MI 48226
(313) 237-3089

FIRST AMENDED COMPLAINT

NOW COME Plaintiffs, by and through their attorneys, CHRISTOPHER TRAINOR & ASSOCIATES, and for their First Amended Complaint against the above-named Defendants, state as follows:

1. Plaintiffs are citizens of and reside together in the City of Detroit, County of Wayne, State of Michigan, located within Eastern District of Michigan.
2. The individually-named Defendants are and/or were police officers employed by Detroit Police Department and were acting under color of law, in their

individual and official capacities, and within the course and scope of their employment at all times mentioned herein.

3. All events giving rise to this lawsuit occurred in the City of Detroit, County of Wayne, State of Michigan, located within the Eastern District of Michigan.
4. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1331 [federal question], 28 U.S.C. § 1343 [civil rights].
5. That this lawsuit arises out of Defendants' violations of Plaintiffs' constitutional rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution, consequently, Plaintiffs have a viable claim for damages under 42 U.S.C. § 1983.
6. That the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interest, costs, and attorney fees.

FACTS

7. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.
8. On or about February 8, 2007, Plaintiffs' relative Marlon Westbrook was arrested between 8:30 and 9:30 a.m. while he was at Court for a Court appearance.
9. On that same date, between 5:00 and 6:00 p.m., Defendants barged into Plaintiffs' home and broke down the door.
10. Defendants had a warrant to search for property and certain items related to the arrest of Marlon Westbrook.
11. Defendants were aware that Marlon Westbrook was already in custody.

12. Defendants entered the home and did not knock or announce their presence.
13. Immediately upon barging into the home, Defendants had their guns blazing and they began shooting.
14. There were children and infant present in the home.
15. Without any justifiable reason whatsoever, Defendants shot Plaintiffs' two dogs, while a child was in the same room as the dogs.
16. Defendants wrongfully detained Plaintiffs for nearly an hour.
17. Defendants had their guns pointed at Plaintiffs and the child and infant.
18. As a result of Defendants actions and/or inactions, Plaintiff sustained injuries and damages.

[COUNTS I-IV, PENDING IN STATE COURT]

COUNT V--42 U.S.C. § 1983--VIOLATION OF THE FOURTH AMENDMENT
UNREASONABLE SEIZURE

19. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.
20. The individually-named Defendants are and/or were police officers employed by Detroit Police Department and were acting under color of law, in their individual and official capacities, and within the course and scope of their employment at all times mentioned herein.
21. As a result of the conduct complained of herein, Plaintiff suffered a deprivation of her clearly established rights protected and secured by the Fourth and Fourteenth Amendments to the United States Constitution and by other laws, including but not limited to, the right to be free from a deprivation

of liberty, property, bodily security, and integrity without due process of law, and the right to be free from unreasonable searches and seizures.

22. That Defendants violated Plaintiffs' clearly established and federally protected rights by detaining, seizing, restraining, and/or restricting the liberty of Plaintiffs without a reasonable suspicion and/or probable cause to do so.
23. That Defendants' acts were at all times intentional, objectionably unreasonable, unnecessary, excessive, reckless, and/or grossly negligent in violation of Plaintiffs' clearly established rights under the United States Constitution.
24. As a result of Defendants' violation/deprivation of Plaintiffs' constitutional rights, Plaintiffs have a viable claim for compensatory and punitive damages pursuant to 42 U.S.C. § 1983 together with costs, interest, and attorney fees pursuant to 42 U.S.C. § 1988.

COUNT VI--42 USC § 1983--VIOLATION OF THE FOURTH AMENDMENT
VIOLATION OF KNOCK AND ANNOUNCE

25. Plaintiffs reallege and incorporate by reference each and every paragraph of this Complaint as though fully set forth herein.
26. That the Fourth Amendment to the United States Constitution establishes that Plaintiff has the right to be free from the deprivation of life, liberty, and bodily security without due process of law and to be free from unreasonable searches.
27. The individually-named Defendants are and/or were police officers employed by Detroit Police Department and were acting under color of law, in their

individual and official capacities, and within the course and scope of their employment at all times mentioned herein.

28. At all material times, Defendants acted under color of law and unreasonably when they violated Plaintiff's Fourth Amendment rights and illegally entered Plaintiffs' home without knocking or announcing their presence or allowing any reasonable time for Plaintiffs to respond.
29. Defendants were under the statutory obligation to knock and announce their presence pursuant to Mich. Comp. Laws § 780.656.
30. Defendants acted unreasonably and failed in their duty to act lawfully when they illegally entered Plaintiffs' home without knocking, announcing their presence and purpose, and to give Plaintiffs a reasonable amount of time to respond.
31. Defendants acted under color law and are not entitled to qualified immunity because they violated Plaintiffs' clearly established Fourth Amendment rights to be free from unreasonable searches.
32. Defendants' illegal acts were the direct and proximate cause of Plaintiffs' deprivation of their Fourth Amendment rights.
33. Due to Defendants' actions, Plaintiffs' Fourth Amendment rights were violated and pursuant to 42 U.S.C. § 1983, Plaintiffs respectfully request this Honorable Court to award exemplary, compensatory, and punitive damages plus costs, interest, and attorney fees as set forth in 42 U.S.C. § 1988.

COUNT VII--42 U.S.C. § 1983—VIOLATION OF 14th AMENDMENT
PROCEDURAL DUE PROCESS

34. Plaintiffs reallege and incorporate each and every paragraph of this Complaint as though fully set forth herein.
35. The individually-named Defendants are and/or were police officers employed by Detroit Police Department and were acting under color of law, in their individual and official capacities, and within the course and scope of their employment at all times mentioned herein.
36. The Fourteenth Amendment to the United States Constitution guarantees that no State shall deprive any person of life, liberty, or property, without due process of law.
37. At all pertinent times, Plaintiff had a property interest in their pet dogs.
38. Defendants' actions of shooting Plaintiffs' dogs deprived Plaintiffs of full measure of enjoyment in the property interest in such dogs.
39. Due process is required prior to taking of property.
40. Despite the due process that was required, Defendants barged into Plaintiffs' home and unlawfully took their property by killing and shooting Plaintiffs' dogs.
41. Reasonable government employees in the position of Defendants would know that their actions would violate Plaintiffs' well-established constitutional right to procedural due process.
42. As a direct and proximate cause of Defendants' unlawful actions against Plaintiffs as described, Plaintiffs have suffered injuries and damages, including, but not limited to, loss of property; loss of right of enjoyment in

their property; mental and emotional distress; and loss of the ordinary pleasures of life.

43. As a further consequence of Defendants' conduct, Plaintiffs have a viable claim for compensatory and punitive damages, together with costs, interest and attorney fees.

DAMAGES AND RELIEF REQUESTED

44. Plaintiff realleges and incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.
45. As the direct and proximate result of the aforementioned acts by the Defendants in this case, Plaintiff sustained damages, including economic and noneconomic damages that exceed the amount of Seventy-Five Thousand Dollars (\$75,000.00).
46. That Plaintiff is entitled to exemplary and/or treble damages, as Defendants' acts were egregious and outrageous and caused the damages of Plaintiff to be heightened.
47. Plaintiff requests that this Honorable Court enter an award in favor of Plaintiff and against Defendants in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), together with costs, interest, and attorney fees.

Respectfully Submitted,
CHRISTOPHER TRAINOR & ASSOCIATES

s/ Christopher J. Trainor
CHRISTOPHER J. TRAINOR (P42449)
Attorney for Plaintiffs
9750 Highland Road
White Lake, MI 48386
(248) 886-8650
Robin.woodhull@cjtrainor.com

Dated: May 13, 2009

CJT/mkb

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Detroit, MI 48226/313.237.3089

DEMAND FOR JURY TRIAL

NOW COME Plaintiffs, by and through their attorneys, CHRISTOPHER TRAINOR & ASSOCIATES, and hereby renew and rely upon their prior Demand (originally filed in state court and renewed herein) for Trial by Jury in the above-captioned matter.

Respectfully Submitted,
CHRISTOPHER TRAINOR & ASSOCIATES

s/ Christopher J. Trainor
CHRISTOPHER J. TRAINOR (P42449)
Attorney for Plaintiffs
9750 Highland Road
White Lake, MI 48386
(248) 886-8650
Robin.woodhull@cjtrainor.com

Dated: May 13, 2009
CJT/mkb

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: ***Jerry L. Ashford, Esq.*** and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: ***None***.

s/ Christopher J. Trainor (P42449)
Christopher Trainor & Associates
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White Lake, MI 48386
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